

Memorandum

From: Judge David Gersten (ret.)
To: Association Membership – New World Condominium Apartments
Condominium Association, Inc.
Date: March 6, 2023
Re: New World Condominium Apartments Condominium Association, Inc. -
Finding of Untenantability and Implementation of Declaration

Article 12.8 of the Declaration of the New World Condominium Apartments Condominium Association, Inc. (“New World Condo”) provides in relevant part:

12.8 DETERMINATION TO REPAIR. If any part of the Condominium Property is damaged by casualty the determination as to whether or not it shall be repaired (which term shall include reconstruction) shall be made in the following manner:

. . . .

b. DAMAGE TO UNITS. . . . (ii) If the damage is to Units and if the Units to which more than 70% of the Common Elements are appurtenant are found by the Board to be untenable, then the damaged property will not be repaired, and the Condominium will be terminated (without agreement as elsewhere provided), unless within sixty (60) days after the casualty, voting interests representing 70% or more of the Common Elements agree in writing to the repair. . . .

See New World Condo Declaration, at Book 17301, Page1661, August 2, 1996.

The Receiver has obtained an opinion of counsel as to the issue of untenability which states that the New World Condo property is 100% untenable. See attached March 6, 2023 Opinion.

The Opinion states and concludes that:

The term “untenantable” appears only once in Section 12.8(b)(ii) of the Declaration. Specifically, it appears in the context of the Board’s finding of damage to the Condominium Property after a casualty such as a fire. Untenantable refers to a situation where property cannot be used or occupied. In this case, New World Condo was damaged by a fire resulting in the City of Miami Gardens declaring that 100% of New World Condominium Property is an “unsafe structure.” All occupants had to vacate the premises and cannot return. Unsafe structures in Miami-Dade County, Florida, are governed by Section 8-5 of the Florida Building Code. An unsafe structure is defined as creating a danger to the health and safety of

the citizens. An unsafe structure includes buildings that have been substantially damaged by fire or that are vacant, unguarded, and open at doors or windows. New World Condo meets the Florida Building Code's definition of "unsafe structure."

The City of Miami Garden's declaration that 100% of New World Condo is an "unsafe structure" prevents all use or occupancy of the Condominium Property by its owners. As a result, New World Condo is 100% untenable within the context of Section 12.8(b)(ii) of the Declaration.

Based upon the foregoing, the Receiver acting as the Board pursuant to the Court's February 7, 2023 Order, hereby finds that the "Condominium Property" as defined by the Declaration is untenable pursuant to the condominium documents.

The Association will schedule a meeting of the Membership of the Association. A written vote by electronic means or otherwise will be taken to determine whether the "voting interests representing 70% or more of the Common Elements agree in writing to the repair."

If 70% of the voting interests vote to repair, then the Receiver will take appropriate steps including making special assessments upon the unit owners as needed to complete such repairs.

If 70% do not vote in favor of making repairs, the Receiver will take appropriate measures pursuant to the Declaration and under Florida law.

The Morgan Law Group, P.A.

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March 6, 2023

Via E-mail Only

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Re: *Legal Opinion on Untenantable Condominium Units*

Dear Peter:

This in response to your request for an opinion letter regarding whether New World Condominium Apartments Condominium Association, Inc. (“New World Condo”) has become “untenantable” within the context of its Declaration of Condominium.

I am qualified to provide this opinion. I am an attorney licensed to practice law in the State of Florida. In addition, my professional experience makes me uniquely qualified to provide this legal opinion. I have focused my practice on community association law for over thirteen (13) years. During this time, I have become familiar with legal issues uniquely applicable to condominium associations.

We discussed that New World Condo is under a receivership, that Judge David M. Gersten (Ret.) is the court-appointed receiver, and that the City of Miami Gardens declared New World Condo an unsafe structure as a result of a fire. I studied the Declaration of New World Condo and quoted the relevant portion below. I reviewed public records relevant to New World Condo including recorded governing documents, secretary of state filings, and public dockets. I reviewed applicable statutes including Chapter 718 (Florida Condominium Act) and Chapter 83 (Florida Landlord and Tenant Act). I examined the satellite imagery of the Condominium Property before the fire and news coverage of the aftermath. The news depicted images of New World Condo in a destroyed state after the fire. Based on the foregoing, and the following applicable law, I believe New World Condo is 100% “untenantable” within the meaning of its Declaration.

Article 12.8 of the Declaration of New World Condo provides in relevant part (emphasis added):

12.8 DETERMINATION TO REPAIR. If any part of the Condominium Property is damaged by casualty the determination as to whether or not it shall be repaired (which term shall include reconstruction) shall be made in the following manner:

....

b. DAMAGE TO UNIT.

....

(ii) If the damage is to Units and if the Units to which more than 70% of the Common Elements are appurtenant are found by the Board to be **untenantable**, then the damaged property will not be repaired, and the Condominium will be terminated (without agreement as elsewhere provided), unless within sixty (60) days after the casualty, voting interests representing 70% or more of the Common Elements agree in writing to the repair.

(New World Condo. Dec. at Book 17301, p. 1661, August 2, 1996.) The term “untenantable” appears only once in Section 12.8(b)(ii) of the Declaration. Specifically, it appears in the context of the Board’s finding of damage to the Condominium Property after a casualty such as a fire.

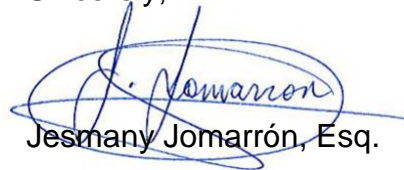
Untenantable refers to a situation where property cannot be used or occupied. In this case, New World Condo was damaged by a fire resulting in the City of Miami Gardens declaring that 100% of New World Condominium Property is an “unsafe structure.” All occupants had to vacate the premises and cannot return.

Unsafe structures in Miami-Dade County, Florida, are governed by Section 8-5 of the Florida Building Code. An unsafe structure is defined as creating a danger to the health and safety of the citizens. An unsafe structure includes buildings that have been substantially damaged by fire or that are vacant, unguarded, and open at doors or windows. New World Condo meets the Florida Building Code’s definition of “unsafe structure.”

The City of Miami Garden's declaration that 100% of New World Condo is an "unsafe structure" prevents all use or occupancy of the Condominium Property by its owners. As a result, New World Condo is 100% untenable within the context of Section 12.8(b)(ii) of the Declaration.

Should you have any other questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Jomarrón", is written over a blue oval scribble. The signature is fluid and cursive.

Jesmany Jomarrón, Esq.